IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 20520 of 2006

Date of decision: 22.12.2006.

Sukhdev Singh …Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Rohtak and ors …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr Gurdeep Singh, Advocate, for the petitioner.

The petitioner seeks quashing of the impugned order dated 27.8.1997 (Annexure P4) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak (Respondent-1) (Labour Court – for short) and for directing the General Manager, Haryana Roadways, Rohtak (respondent-3) to reinstate him in service with full back wages.

The petitioner was appointed as Driver by the General Manager, Haryana Roadways (respondent-3) on 17.8.1989 (Annexure P1). He continued to work upto 21.8.1990 when he was terminated from service. Aggrieved against his termination from service, he served a Demand Notice dated 4.12.1990 and raised an industrial dispute. The State Government referred the dispute raised by the petitioner to the Labour Court under Section 10(1)(c) of the Industrial Disputes Act, 1947 (Act – for short). The reference was to the effect, whether the termination of service of Sukhdev Singh (petitioner) is justified and in order and if so, to what relief was he entitled to. The claim set up by the petitioner was that the management had violated the provisions of

Sections 25F and 25H of the Act and there were persons junior to him who were still in service. The Labour Court held that the services of the Workman had been terminated during the period of probation and accordingly he was not entitled to any relief. The said order, as already noticed, is assailed in this petition.

Learned counsel for the petitioner contends that the Labour Court has placed reliance only on Clause (1) of the appointment letter dated 17.8.1989 (Annexure P1) of the petitioner wherein it is mentioned that the petitioner will be on probation for a period of 2 years which may be extended to 3 years and that his services could be terminated if his work and conduct was not found satisfactory. It is submitted that the said Clause (1) cannot be read in isolation without considering the conditions provided in Clause (3), which enjoins the appointment of the petitioner to be terminated on one month's notice from either side provided that it is open to the government to make payment in lieu of notice. Therefore, it is contended that the termination of the petitioner being admittedly in violation of Clause (3) of his appointment letter inasmuch as no notice was issued before terminating the services of the petitioner, the impugned order is liable to be quashed. It is also contended that the conduct of the petitioner was found to be not satisfactory on account of the fact that he had caused an accident. However, in the criminal case that was registered against the petitioner, he was acquitted by the learned JMIC, Rohtak vide his order dated 9.3.2006 (Annexure P5). Therefore, the petitioner is liable to be reinstated in service after quashing the impugned award of the Labour Court.

We have given our thoughtful consideration to the contentions of the learned counsel for the petitioner.

The petitioner was admittedly appointed as Driver by the General Manager, Haryana Roadways (respondent-3) on 17.8.1989. The conditions of his appointment inter alia provided that his appointment is on probation for a period of 2 years which could be extended upto 3 years and if his work and conduct was not found satisfactory, his services may be terminated. The services of the petitioner were terminated by respondent-3 vide order dated 21.8.1990. The petitioner had caused an accident due to rash and negligent driving within a week of his appointment on 23.8.1989 while on duty on Bus No.HYO 1567. As a result of the said accident, 5 persons died and several others received injuries. The Haryana Roadways bus had been badly damaged. The contention of the learned counsel for the petitioner is that the services of the petitioner had been terminated without issuing one month's notice as provided for in Clause (3) of the appointment letter and clause (1) of the appointment letter could not be read in isolation and was to be read in continuation to Clause (3). We, however, are unable to agree with the said contention of the learned counsel for the petitioner. Clause (1) of the appointment letter provides for a period of probation and it is specifically provided that if the work and conduct of the petitioner was not found satisfactory, his services may be terminated. Clause (3) provides for termination of services independent of Clause (1) and the appointment would be terminable on one month's notice from either side, provided that it would be open to the government to pay the petitioner in lieu of the notice period. However, in case the work and conduct is not found satisfactory, his services may be terminated in accordance with Clause (1), which is independent of Clause (3). A probationer has no right to the post held by him and under the terms of his appointment, his services are liable to be terminated at any time during the period of probation if his work and conduct is found to be not

satisfactory. The management having found that the work and conduct of the petitioner was not satisfactory within the period of probation was entitled to terminate him from service. The mere fact that the petitioner has been acquitted by the criminal Court would not show that he has not been negligent in the performance of his duty. The standard of proof in a criminal case and in a civil one is materially different. To establish the guilt in a criminal case, the case is to be proved beyond shadow of reasonable doubt. However, liability in a civil case can be fastened on the preponderance of probabilities. It has come on record that the claimants in the accident which was caused while the petitioner was driving the bus, had filed claim petitions and the Motor Accident Claims Tribunal, Rohtak vide its award dated 3.8.1991 held that the accident was caused due to the rash and negligent driving of the driver i.e. the petitioner. The dispute raised before the Labour Court was whether the termination of services of the petitioner amounted to retrenchment in view of Clause (bb) of Section 2 (oo) of the Act. The Labour Court held that the termination of services of the petitioner was stipulated in the contract of service and is excluded from the definition of retrenchment. The award passed by the Labour Court in the facts and circumstances of the case does not suffer from any infirmity which would warrant interference of this Court in exercise of its supervisory jurisdiction. A writ of certiorari can be issued by this Court for correcting the errors of jurisdiction committed by the inferior Courts and Tribunals. However, the supervisory jurisdiction of this Court is not to be invoked for interfering with the findings of facts reached at by the Labour Court as a result of appreciation of evidence. The learned Labour Court having correctly appreciated the facts and also the legal position on record, has rightly held the termination of the service of the petitioner to be in accord with the conditions of his appointment.

Consequently, there is no merit in this petition and the same is accordingly dismissed.

(S.S.NIJJAR)
JUDGE

22.12.2006. (S.S.SARON)
ASR JUDGE

WHETHER FIT FOR INDEXING : YES/NO